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IN THE
Supreme Court of the United States

October Term, 1940

No. **209**

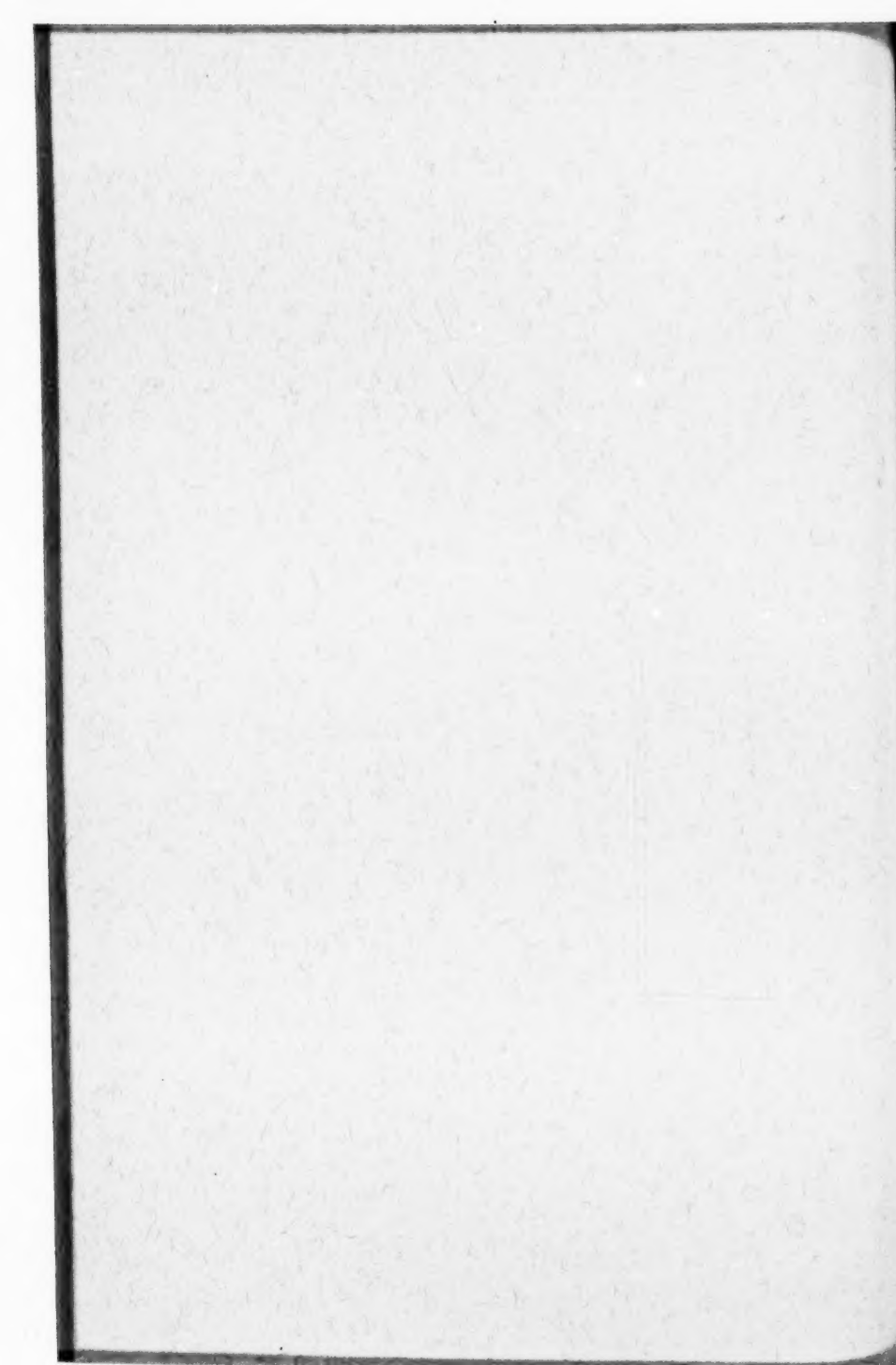
CHAPMAN BROTHERS COMPANY, a corporation,
Appellant,

vs.

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES,
Appellee.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT, AND
BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI TO
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BRIEF IN SUPPORT THEREOF.

To the Honorable Chief Justice, and to the Associate Justices of the Supreme Court of the United States:

Your petitioner, Chapman Brothers Company, a California corporation, respectfully prays for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit to review a decision and judgment of that court made and entered April 10, 1940, affirming the dismissal by the District Court of the petitioner's voluntary petition for reorganization under Chapter X (Chandler Act), National Bankruptcy Act, and amendments of 1938.

A transcript of the record in the case, including the proceedings in said Circuit Court of Appeals, has been filed herewith in accordance with rule 38 of this court.

The Questions Presented.

1. Whether it is clearly erroneous and not in accord with the true purposes and intent of Congress, as expressed in the National Bankruptcy Act, as amended (Chandler Act, Chapter X), and with the principles of the decisions of this court made prior to the enactment of Chapter X, particularly in respect of Section 146 thereof, 11 U. S. C. A. 546, relating to good faith *in the matter of filing petition*, as distinguished from the matter of good faith or lack of it *in the filing of a plan of reorganization*, to dismiss a voluntary petition for lack of good faith where debtor has *not* been allowed to file a plan of reorganization.

2. Whether it is error for district judge to refuse to amend the findings as to the *fair market value* of real and personal properties of debtor, where there is evidence furnished by the Security Bank's own records to support a finding of a much greater value than that found by the said District Court.

3. Whether the right of the bankrupt in possession, and trustees, to show a reasonable probability of rehabilitation be given an opportunity to present a plan of reorganization is, under the amendments to the National Bankruptcy Act (Chandler Act), Chapter X, Section 146, conditioned upon such a plan being completed at the time the petition is filed.

Summary Statement of the Matter Involved.

On March 1, 1939, appellant corporation filed a *voluntary* petition seeking to take advantage of Chapter X of the Chandler Act, 11 U. S. C. A., Section 501, *et seq.*, relating to corporate reorganization. In said petition debtor claims assets of the value of \$3,095,802.65, and total liabilities of \$2,305,922.50, the net worth of its properties thus amounting to \$789,880.15 Exhibit "A" [34-35]. Of the assets, \$3,058,350.00 represented the value of the real estate and improvements and personal property covered by various deeds of trust and chattel mortgages given as security for obligations amounting to \$2,139,338.03, petitioner's remaining indebtedness being unsecured.

According to the petition, the appellant sets forth that some 460 feet of Wilshire Boulevard frontage, with improvements of Brown Derby, de luxe bungalow structures, hotel, apartments and flats, and market buildings and drug stores, the improvements, extending through to Sixth Street in Los Angeles, California, encompassed properties for which petitioner was offered as high as \$5,000,000.00 in 1929, and \$3,200,000.00 in cash and \$500,000.00 in Class "A" preferred stock in a new corporation to be organized by the offeror, and fifty per cent of the no par common stock of a corporation to be organized by the offeror, the latter offer being made about August of 1930.

Only a *suggested* plan of reorganization was set forth in the petition, by which bonds and preferred stock were to be offered to the public, *if the petitioner were permitted*

by the court to file an application with the Corporation Commissioner of the State of California to accomplish such purpose.

The submission of an actual plan of reorganization by the bankrupt and trustees, for the approval or disapproval of the court was never permitted by the court. The petitioner's equity in the properties was to be held in the form of common stock.

Security-First National Bank of Los Angeles, appellee, denied that the petitioner had an equity of \$789,880.15, or any equity whatever in the properties and alleged the reasonable market value of all the properties owned by the debtor did not exceed \$1,262,736.00. Thereafter trial was had upon the issues drawn by the petition and the answer. Findings of fact and conclusions of law were signed by the trial court, and the court's decision thereupon held that the debtor corporation was hopelessly insolvent and that the evidence *established beyond any possible doubt that no plan could be presented*, and that it was unreasonable for the debtor corporation to expect that any plan of reorganization could be effected and that, therefore, such a lack of good faith required a dismissal of the petition.

Upon appeal, the Circuit Court of Appeals for the Ninth Circuit affirmed the trial court.

Statute Involved.

The statute involved is the National Bankruptcy Act, United States Code, Title II, as amended generally by Act of June 22, 1938 (Chandler Act, Chapter X, Section 146):

“Without limiting the generality of the meaning of the term ‘good faith’, a petition shall be deemed not to be filed in good faith if * * * (3) it is unreasonable to expect that a plan of reorganization can be effected.”

Rulings of the Courts Below.

The United States District Court, Southern California, Central Division, found that the appellant was hopelessly insolvent; that it was unreasonable for the debtor corporation to expect that any plan of reorganization could be effected. The court dismissed this petition, deeming the petition not to have been filed in good faith. This judgment was affirmed by the Circuit Court of Appeals for the Ninth Circuit. The opinion of the Circuit Court of Appeals is reported in 111 Fed. (2d) 86.

Reasons Relied Upon for the Granting of a Writ of Certiorari.

The Circuit Court here has decided an important question of federal law *since the amendments to the National Bankruptcy Act of June, 1938, effective September, 1938*, in conflict with the principles of decisions of other Circuit Courts on the same matter (cases hereinafter cited). Since said amendments this question has not been, but

should be, settled by this court, as it appears the Circuit Court has here decided a federal question in conflict with applicable decisions of this court.

Since the amendments of June 22, 1938, to the National Bankruptcy Act, effective September, 1938, there have been no clear decisions of this court as to the limits of the concept of good faith required by Section 146, Chapter X. The elements are vague and uncertain and produce a confusion which should be resolved. The cases later cited in the brief show variations in the interpretations of the rule prior to amendments not only between the circuits, but within the same circuit. A determination is essential to the orderly and uniform administration of such bankrupt cases.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued under the seal of this court and directed to the United States Circuit Court of Appeals, Ninth Circuit, commanding that Circuit to certify and send to this court on a day to be designated, a full and complete transcript of the record of all proceedings in said Circuit Court of Appeals in this cause, to the end that this cause may be reviewed and determined by this court; that the judgment of said circuit Court of Appeals be reversed or modified as provided by law, and such other and further relief be granted as may seem proper.

Dated: June 28th, 1940.

CHAPMAN BROTHERS COMPANY,
By G. A. CHAPMAN,
Petitioner.

EVANS, PEARCE & CAMPBELL,
By WM. H. CAMPBELL,
Attorneys for Petitioner.

